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-53- (Once Amended)

A battery to which is attached a label that contains a tester for the battery, said battery comprising a conductive cover, a first terminal, and a second terminal, wherein the label is comprised of an insulative layer; a tester circuit having a first terminal contact end to contact [a] said conductive cover forming [a] said first terminal of the battery, and a second terminal contact end to contact [a] said second terminal of the battery, wherein the first end of the circuit is disposed out of contact with [the] said conductive cover to provide a switch means for the tester, which ends of the circuit being electrically connected to each other via an area of controlled resistivity, and which circuit being electrically and thermally insulated by said insulative layer from [the] said first and second terminals of the battery except for [the] said first and second terminal contact ends; and an indicating material being disposed in responsive contact with [the] said area[s] of controlled resistivity in the tester circuit.

REMARKS

This amendment is being filed concurrently with:

- (1) Opposition By Tucholski Pursuant To Section 1.638 To Cataldi Et. Al.'s Contingent Section 1.633(a) Motion No. 10; and
- (2) The party Tucholski's Contingent Motion Pursuant To §1.633(c)(2) Seeking To Redefine The Interfering Subject Matter By Amending Application Claims Corresponding To The Count. Items (1) and (2) are being filed in Interference No. 103,036. Item (2) and this amendment are submitted as a contingency in the event that Cataldi et al.'s Motion No. 10 is accepted, in whole or in part, and claims of the Tucholski application are found insufficient under 35 U.S.C. §112. In that event, this contingent Amendment Under 37 C.F.R §1.115 is submitted to remedy any perceived §112 problems with the Tucholski application claims in

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Interference. No new matter is added by these amendments.

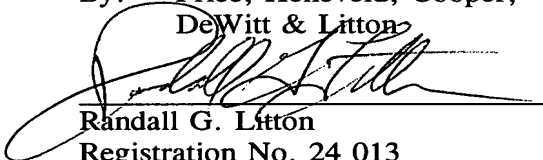
Applicant Tucholski respectfully submits that, contingent upon Cataldi et al.'s Motion No. 10, the amendments set forth herein be entered in the Tucholski application Serial No. 07/641,394.

Respectfully submitted,

GARY R. TUCHOLSKI

By: Price, Heneveld, Cooper,
DeWitt & Litton

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